APARTMENT AND OFFICE BUILDING ASSOCIATION of METROPOLITAN WASHINGTON

Ms. Magalie Roman Salas
Secretary, Federal Comnunications Commission
445 12th. Street, S.W. TW-A325
Washington, D.C. 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No.96-98

Dear Ms. Salas:

This letter is in response to the FCC's Notice of Proposed Rulemaking of July 7, 1999 with regard to requiring owners of multi-tenant buildings - whether residential, commercial office or retail facilities - to allow multiple telephone or other telecommunications services providers to freely enter, wire and otherwise use those owners' properties to market, sell, and provide services to the residents of those properties.

The Apartment and Office Building Association (AOBA) is the principal trade association representing the owners and managers of multi-family residential rental and commercial office properties in the Metropolitan Washington, D.C. area, which includes not only the District of Columbia, but also Suburban Maryland and Northern Virginia. As such, AOBA represents nearly 150,000 multi-family residential rental units and over 103 million square feet of commercial office space in the above listed jurisdictions. Clearly, The FCC's proposed rule making would have a very substantial impact upon the physical properties, as well as on the economic and property rights of our members.

Consequently, AOBA is concerned that, in addition to the substantive constitutional rights issues raised by this proposal, any action by the FCC with respect to requiring forced access to private property by multiple numbers of communications providers will unnecessarily adversely affect the ability of our members to conduct their businesses in a secure, efficient, effective and economic manner, as well as raise a host of other legal issues, including private contractual rights. The Commission's public notice also raises a number of other issues.

First and foremost, we do not believe that the FCC needs to act in this arena at this time. Given current market conditions in the multi-family and commercial office industries, landlords must provide their tenants the latest state-of-the-art communications amenities at the most economical prices if those landlords are to remain competitive in the housing or office space market. A landlord who ignores the needs and desires of his tenants does so at the risk of his rent revenue stream and his long term profits. Other significant issues which concern our members include the following:"nondiscriminatory" access to private property; expansion of the scope of existing

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easements; location of the demarcation point; exclusive contracts; and expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.

Nondiscriminatory Access: For security as well as for business purposes landlords, must retain control over riser and other space occupied by telecommunications providers, particularly where there are multiple providers in any building. Landlords must have control over who enters their buildings and the timing and conditions under which such entry is made because those landlords bear the responsibility for damages to those buildings, leased premises and the facilities of other communications services providers, as well as for personal injuries to tenants and visitors. Qualifications, reliability and accountability of communications providers and their employees are an important issue. The term "nondiscriminatory" is not adequately defined from the standpoint of a landlord's overall responsibilities to his tenants. A new communications provider to a building may not be a known quantity to the landlord or to his tenants and thus a poses a substantially greater risk than an existing provider.

Scope of Easements: Expansion of the scope of existing easements interferes with contractual rights which set the scope and conditions of those existing easements. Expanding those easements would constitute a constitutionally prohibited public taking for a non-public purpose. If telecommunications providers desire to be granted the benefits of eminent domain, they should be required to register as public utilities and be subject to public regulation.

Demarcation Point: The existing demarcation point rules offer the flexibility needed by landlords and communications providers alike. They provide the clarity and stability required by all parties and have become well-accepted and -understood.

Exclusive Contracts: Exclusive contracts provide new competitors a better opportunity to gain a position in local markets by restricting the ability of existing providers to enter a building, entice customers with below-cost prices, drive out the new competitors and then raise prices and/or decrease services. Such activities would restrict the ability of affected landlords to compete in the rental housing or office markets and deprive tenants of access to state-of-the-art, fairly-priced communications services.

Expansion of Satellite Dish Rules: The existing rules for television services already interfere with the ability of landlords to effectively manage their properties and should not be expanded to include data and other communications services.

In our judgment, no futher action by the FCC is warranted with respect to these issues.

Sincerely,

Margaret O. Jeffers

Executive Vice President